

REMARKS

Interview Summary

Applicant's counsel greatly appreciates the courtesy extended by Examiner Azpuru in granting a telephone interview.

Applicant's representative, Dr. Gloria Gusler (Reg. No. 50,282), held a telephonic interview with Examiner Azpuru on Tuesday, December 8, 2009. Applicant's representative requested clarification regarding the most recent Office Actions received. Specifically, Applicant's representative informed Examiner Azpuru that a Non-Final Office Action with a mail date of November 17, 2009 had been received as well as a Non-Final Office Action with a mail date of November 19, 2009. The content of the two Non-Final Office Actions were identical. However, the content of the Non-Final Office Action with a mail date of November 17, 2009 received by Applicant's representative did not match the paper appearing in the file history on PAIR which was an Ex-Parte Quayle action with a mail date of November 17, 2009. Examiner Azpuru stated that Applicants should respond to the Non-Final Office Action with a mail date of November 19, 2009.

Thus, Applicants are responding to the Non-Final Office Action with a mail date of November 19, 2009. Applicants presume that a response within three months of November 19, 2009 will be considered to be timely filed.

Claim Status

Claims 39, 49, 50, 66, and 68 are pending as all other claims have been cancelled.

Previously withdrawn claims 39, 49, and 50 have been rejoined. The Examiner has indicated that claims 49, 66 and 68 are allowable. Claims 39 and 50 have been rejected. Claims 39 and 50 have been amended.

Reconsideration is respectfully requested.

Rejections under 35 U.S.C. § 112

First 35 U.S.C. § 112 Rejection

The Examiner has rejected claim 39 under 35 U.S.C. § 112, first paragraph because, in the Examiner's view, "the specification, while being enabling for a chromium oxide layer when the surface is stainless steel, does not reasonably provide enablement for any chromium oxide layer in isolation."

Applicants have amended claim 39 and believe that such amendment addresses the Examiner's rejection.

Second 35 U.S.C. § 112 Rejection

The Examiner has rejected claim 50 under 35 U.S.C. § 112, second paragraph as being indefinite. Specifically, the Examiner has stated that "[t]he claim should refer to the specific polymers of the Markush Group set out in claim 66." It is the Examiner's position that the claim, "[a]s written, . . . appears to incorporate polymers which are not part of this group."

Applicants traverse.

Applicants have amended claim 50 to change the phrase "region includes" to "layer comprises." However, the Markush group of claim 66 is a Markush group of materials from

which the material of the primer region is selected. Claim 50 depends from claim 66, and recites “wherein the reservoir layer comprises a combination of polymers.” Thus, the claim as amended in this paper is definite because the Markush group of claim 66 refers to the material of the primer region, but there is no such limitation with respect to the polymer of the reservoir layer of claim 66. Because claim 50 further modifies the reservoir layer, and not the primer region, the claim as written is definite.

Applicants request the withdrawal of both of the 35 U.S.C. § 112 rejections.

CONCLUSION

In light of the foregoing claim amendments and remarks, this application is considered to be in condition for allowance. The Examiner has already indicated that claims 49, 66 and 68 are allowable. Applicants respectfully request the allowance of pending claims 39 and 50.

If necessary to ensure a timely response, this paper should be considered as a petition for an Extension of Time sufficient to provide a timely response. The undersigned authorizes the Commissioner to charge any fees that may be required to the **Squire, Sanders, and Dempsey Deposit Account No. 07-1850**.

Should the Examiner have any questions regarding this communication, the Examiner is invited to contact the undersigned at the telephone number shown below.

Respectfully submitted,

Dated: February 19, 2010
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